

Doc. 95-12

ORIGINAL

GARDNER, CARTON & DOUGLAS

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JAN 19 1990

January 19, 1990

Federal Communications Commission
Office of the Secretary

Ms. Donna Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: DA 89-1060

Dear Ms. Searcy:

Enclosed on behalf of A. C. Nielsen Company are an original and four copies of an Opposition to Applications for Review in the above-referenced matter.

Any questions regarding this matter may be referred to the undersigned.

Sincerely,


Grier C. Raclin

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

ORIGINAL

RECEIVED

JAN 19 1990

Federal Communications Commission
Office of the Secretary

In the Matter of:)
Request Of A.C. Nielsen Co.)
for Permissive Use of Line) DA 89-1060
22 of the Active Portion of)
the Television Video Signal)

To: The Commission

OPPOSITION TO APPLICATION FOR REVIEW

A.C. Nielsen Company ("Nielsen") by its attorneys, hereby opposes the Application for Review filed by Airtrax, a California partnership, on December 20, 1989 (the "Application").^{1/}

Airtrax's Application seeks review of a grant to Nielsen and broadcast licensees in general of permissive authority to transmit Nielsen's Automated Measurement of Line-Ups ("AMOL") Signal Identification ("SID") codes on line 22 of the active television signal. Letter to Grier C. Raclin from Roy J. Stewart, Chief, Mass Media Bureau, dated November 22, 1989 (the "Permissive Authority"). In support of this Opposition, Nielsen states as follows:

^{1/}According to Section 1.115(d) of the Commission's Rules, 47 C.F.R. § 1.115(d) (1989), this Opposition was due to be filed with the Commission on January 4, 1990. However, pursuant to a Consent Motion for Extension of Time filed by Nielsen on December 22, 1989, which was granted by the Commission on January 2, 1990, the time for filing this Opposition was extended until January 19, 1990.

1. This matter has been pending with the Commission for over six months -- since July 19, 1989, when Nielsen filed its original request for Permissive Authority to allow broadcast licensees' transmission of SID codes on line 22 of program and commercial material to be monitored by Nielsen. On September 1, 1989, the Commission issued a Public Notice, in which it requested comment on Nielsen's proposal, and specifically requested, among other things, "additional verification that the AMOL system will not degrade the visible television picture." Public Notice, FCC DA 89-1060, released September 1, 1989. During this proceeding, Nielsen and others have filed with the Commission countless pages of pleadings and supporting material which establish, without legitimate question, that Nielsen's Request met each and every criteria that the Commission has applied in granting similar requests in the past. See Nielsen's Reply Comments at 13-14.

2. On November 22, 1989, after the most exhaustive review ever imposed upon such a proposal, the Commission granted Nielsen's Request, and authorized the "general use of Nielsen's AMOL system on line 22 by licensees in the television services," subject to the restriction that the "AMOL signal shall not be

embedded in commercials or other broadcast materials which are not being monitored by Nielsen." Permissive Authority at 5.^{2/}

3. Through its Application for Review, Airtrax once again seeks to delay and inhibit the implementation of Nielsen's Permissive Authority for purely anticompetitive purposes.^{3/} Airtrax claims in its Application that the issuance of Permissive Authority to Nielsen involves (1) a "question of law and policy

^{2/} The Commission based its conclusions on its specific findings that:

- (1) Nielsen's AMOL/SID transmissions constitute "special signals" that are integral parts of their associated programming material;
- (2) the effects of transmitting the AMOL codes will be no worse than those of previously authorized line 22 uses and will not visibly degrade the picture presented to viewers;
- (3) Nielsen had justified its proposed use of line 22;
- (4) television licensees would benefit from the transmission of AMOL codes on line 22; and
- (5) temporary approval for use of Nielsen's AMOL system on line 22 would be in the public interest.

Permissive Authority at 2-4.

^{3/}See pages 2-4 of Nielsen's Reply Comments. Although Airtrax's Application advances numerous factual assertions and legal theories with which Nielsen strenuously disagrees (including an incorrect and draconian interpretation of the restrictions contained in the Permissive Authority), Nielsen does not wish to exacerbate this clouding of the issues by addressing each of Airtrax's erroneous assertions. Nielsen does not intend by its reticence, however, to imply acquiescence in Airtrax's position and reserves the right to challenge those positions and assertions at later stages, if any, of this proceeding.

which has not previously been resolved by the Commission," and (2) the "application by the Chief [of the Mass Media Bureau] of a policy that should be overturned." Application at 2; see 47 C.F.R. § 115(b)(2).^{4/}

4. The alleged "policy" which Airtrax complains that the Chief failed to serve is to "ensure" that "post production houses will not cause Airtrax codes on line 22 to be overwritten by AMOL codes." Application at 4. There simply is no such Commission policy, and Airtrax fails to cite any support for its claim otherwise.^{5/} Rather, it is apparent from the terms of the Permissive Authority that the policy which the Commission seeks to serve simply was the well-established policy of fostering

^{4/}Airtrax does not (and could not) even suggest that the Chief's grant of Permissive Authority to Nielsen was "in conflict with statute, regulation, case precedent or established Commission policy"; was based upon "an erroneous finding as to an important or material question of fact"; or involved "prejudicial procedural error." 47 C.F.R. § 115(b)(2)(i), (iv) and (v) (1989).

^{5/} The Commission could not adopt such a "policy" without engaging in the marketplace interference that it has determined would stifle technological innovation, lead to inefficient allocation of scarce resources, and generally disserve the public interest. See, e.g., A Re-Examination of Technical Regulations, 99 F.C.C.2d 903, 911 (1984); and Amendment of Parts 22, 190 and 95 of the Commission's Rules to require Conversion to More Spectrum-Conservative Technologies, FCC No. 85-186 (rel. April 19, 1985).

the broadest possible authorized use of the radio spectrum consistent with interference constraints.^{6/}

5. The Permissive Authority serves this policy most clearly when addressing the protection that is applicable to authorized users and uses of line 22. Specifically, in accord with the restrictions normally applicable to all FCC licensees, the Commission through the Chief required Nielsen to avoid causing an "adverse affect" on Airtrax and other authorized users as a result of unauthorized use of line 22, such as a use to encode programming or advertising that Nielsen does not seek to monitor. Permissive Authority at 5. This restriction is no different from the restrictions applicable to all Commission permittees and licensees, in that all users must refrain from adversely affecting authorized users as a result of unauthorized uses of the available spectrum. Thus, the Permissive Authority neither applies Commission policy in an incorrect manner, nor involves a question of law or policy that the Commission has not previously resolved. Indeed, because the Commission reserved the discretion to revoke the Permissive Authority if other authorized users were being unreasonably and adversely affected by unauthorized uses of line 22, Permissive Authority at 5, it is apparent that the Commission already has granted all the relief that Airtrax seeks.

^{6/} This policy has been addressed and reaffirmed many times by the Commission, and does not warrant still more review at this time.

6. Airtrax claims that it deserves unique protection from legitimate competition based upon its shop-worn contention that it is a "start-up entrepreneur" that is engaged in bringing "new technology" to the public. Application at 8. The evidence^{7/} presented in this proceeding totally contradicts Airtrax's claims. Airtrax, through its predecessor-in-interest (and parent), Republic Properties, has held its authorization to use line 22 for over three years,^{7/} but has yet to provide a commercial advertising verification service. At most, Airtrax is engaged in testing its service in a few markets. Similarly, Airtrax's claims to having invented "new technology" is entirely specious. As was established in Nielsen's Reply Comments, Airtrax's codes and transmission system are no different than the SID codes and system that Nielsen invented over 15 years ago. See Nielsen's Reply Comments at 4-5. Airtrax has itself acknowledged that it was Nielsen that first developed the idea -- and technology to implement -- the encoding of SID codes onto lines in the video signal for the purposes of providing

^{7/} See letter to John G. Johnson, Jr., counsel for Republic Properties, Inc. from James C. McKinney, Chief, Mass Media Bureau, dated November 6, 1989; and Letter to Schuyler M. Moore, counsel for Republic Properties, Inc., from William E. Johnson, Acting Chief, Mass Media Bureau, dated August 28, 1987.

authorization without violating its conditions [that Nielsen not adversely affect Airtrax through this implementation]." Airtrax Motion for Stay at 6. This prediction is entirely unsupported^{9/} and is demonstrably false. As set forth in the declarations of David Harkness of Nielsen (Exhibit C) and Steven Goldman of Paramount Pictures Corporation (Exhibit D)^{10/} Nielsen and Paramount have undertaken test transmissions of Nielsen's SID Codes on line 22 of certain Paramount programming in a manner so as to avoid overwriting any codes -- Airtrax's or others' -- that

^{9/}AirTrax's conclusion is dependent upon its inaccurate description of the methodology that post-production houses would follow to encode manually Nielsen's SID codes onto programming. Application at 5. Nielsen has repeatedly and strongly disagreed with AirTrax's melodramatic description of these procedures. Paramount presently is successfully using the "manual" method of encoding its programming with Nielsen's SID codes during the testing referred to in the attached declarations of David Harkness of Nielsen and Steven Goldman of Paramount, Exhibits C and D, respectively.

In any case, Airtrax's description of the manual encoding method is irrelevant; there may be a variety of alternative methods Nielsen might be able to utilize to avoid conflicting uses of line 22. See Nielsen's Comments at 18, n.19, and Reply Comments at 22-24. See also the attached affidavit of Ronald Schlameuss of Valley Stream Group, the manufacturer of the encoders that post-production houses likely will use to encode AMOL codes onto line 22, Exhibit E, wherein he addresses the erroneous claims made in Airtrax's Application at note 1, and states that there is no reason to expect that the encoders could not be modified to avoid such overwriting. Indeed, Airtrax has conceded that its own encoders incorporate this "read-before-writing" capability. See Airtrax's Reply Comments at 14 n.6.

^{10/}The originals of these declarations and the original version of Mr. Schlameuss' affidavit were attached to Nielsen's Supplemental Opposition to Motion for Stay, filed on January 17, 1990.

may appear in commercial advertisements inserted into that programming.

8. Airtrax also ignores in its Application the fact that the syndicated programming industry, and the viewing public in general, would be substantially harmed by a withdrawal of Nielsen's Permissive Authority. The Commission already has determined that the granting of that Authority is in the public interest. Permissive Authority at 4. Moreover, as set forth in the attached declarations of Steven Goldman of Paramount Pictures Corp. (Exhibit D), and Bruce Rosenblum of Warner Brothers (Exhibit F), and in the multitude of Comments and Reply Comments filed in this proceeding by members of the syndicated programming industry, the delay and interference sought by Airtrax will have a serious adverse effect on members of the syndicated programming industry as well as the viewing public generally.


9. In sum, the granting of Airtrax's anticompetitive request^{11/} would deny Nielsen the ability to provide further evidence that Airtrax's speculations are unwarranted; would deny to the Commission the data it has requested in its Public Notice; and would deny to the syndicated programming industry the more reliable ratings information it desires to compete in the marketplace more effectively. To do so solely on the basis of

^{11/}See Nielsen's Supplemental Opposition to Motion for Stay at 7-8 and note 8; and Nielsen's Reply Comments at 25-26.

Airtrax's totally self-serving and unsupported speculations would be improper and unwarranted. In these circumstances and for the foregoing reasons, Nielsen respectfully requests the Commission to deny Airtrax's Application for Review.

Respectfully submitted,

A.C. NIELSEN COMPANY

By: 
Grier C. Raclin, Esq.
Kevin S. DiLallo, Esq.
Catherine M. Grofer, Esq.

Gardner, Carton & Douglas
Suite 750
1101 Pennsylvania Avenue,
N.W.
Washington, D.C. 20004
(202) 879-9460

Dated: January 19, 1989

P-1

TELESCANTM

C5 - 310

36 EAST 12TH STREET/NEW YORK, NEW YORK 10003/212-420-1100

Mr. William J. Tricarico
Secretary of the FCC
Federal Communications Commission
Washington, DC 20554

May 7, 1985

RECEIVED BY

MAY 10 1985

MAIL BRANCH

Dear Mr. Tricarico:

TeleScan, Inc has a system to encode line 20 of the vertical blanking on a television commercial with the advertisers' ISCI identifying number. When the commercial is broadcast the ISCI number is decoded along with the station, time of day, date, length of commercial, and the presence of audio and video. Various reports are presented to participants which provide an independent verification of commercial broadcasts.

We intend to test the system for a six month period and have signed a total of 20 companies to participate in the test. (Attachment I)

We have tested this system in the laboratory and attempted to test it on the air in New York City last December. However, all six commercial stations deleted the code from line 20 and effectively blocked our ability to undertake this enterprise.

We then met with the following stations to try to get them to broadcast the codes: WABC, WCBS, WNBC, and WOR. (WPIX and WNEW did not want to meet with us.) While WNBC has yet to make a decision, we did receive letters from both WCBS and WABC (Attachment II & III) indicating that they were reserving the vertical blanking for their exclusive use, probably teletext.

To demonstrate to the stations that their customers want the ability to independently confirm that their commercials have run, we have circulated a petition (Attachment IV) among advertisers, agencies and buying services which we plan to present to stations.

While we are hopeful that we will be able to convince the stations to share line 20 with their customers, we would like to test and possibly implement the TeleScan system using line 22.

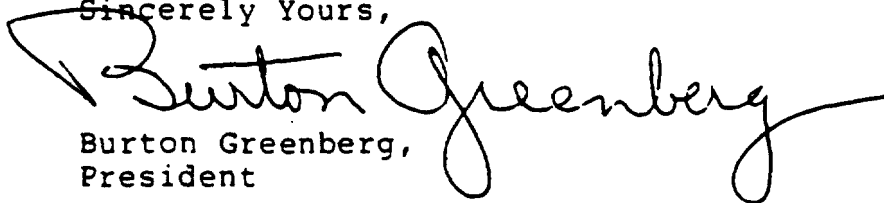
Mr. William J. Tricarico
Page 2

Line 22 is the first line in the active video and is adjacent to line 21 which is currently used for closed caption.

The Question has been raised whether this matter falls under the FCC's jurisdiction. We would appreciate your advice on whether any petition to the FCC is required and whether the FCC has given any direction to stations on the subject.

I hope that this letter clearly demonstrates the need to be able to move ahead and provide the advertising industry with an independent verification system. Your speedy approval of our request will allow the industry to police itself.

Sincerely Yours,


Burton Greenberg,
President

cc:

James McKinney, Chief Mass Media Bureau
John Reiser
Alan Stillwell
Ralph Haller

THE FCC AND I

LAW OFFICES

VERNER, LIIPFERT, BERNHARD, MCPHERSON AND HAND

CHARTERED

SUITE 1000

1660 L STREET, N. W.

WASHINGTON, D. C. 20036

ERWIN G. KRASHOW

DIRECT DIAL NUMBER

(202) 775-1062

CABLE ADDRESS: VERLIP
TELEX 90-4124 VERLIP-WSH

June 12, 1985

Mr. William J. Tricarico
Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D.C. 20554

Re: Special Signal for Coded
Verification Service

Dear Mr. Tricarico:

Ad Audit Inc. respectfully requests authority to include in line 22 of the television active video signal transmitted by television broadcast stations certain coded information associated with a particular program or commercial. This coded information would be used by Ad Audit for an independent and automatic verification that the program or commercial had been broadcast by the station.

FCC Precedent

In a Public Notice dated April 20, 1970 (22 F.C.C.2d 779), the Commission set forth its policy concerning the use of special signals (i.e., signals related to broadcast operation, but not intended for public use). The Commission recognized the benefits of these special signals and noted that they contribute to efficient broadcast operation. However, it was concerned that the use of special signals could have a detrimental effect on broadcast service. Therefore, under the authority of Section 303(e) of the Communications Act, which directs the FCC to regulate the "kind of apparatus to be used with respect to...the purity and sharpness of emissions from each station..." the Commission announced that such signals cannot be employed without its specific

Mr. William J. Tricarico
June 12, 1985
Page 2

authorization. The Commission also specified that such permission will be granted only where it is infeasible to transmit the signals by means which have no detrimental effect on the broadcast service.

The Commission has held that transmission of encoded data for purposes of verification of broadcast is consistent with the definition of broadcasting under Section 3(o) of the Communications Act. See Letter dated January 27, 1984, to Counsel for Audicom Corporation by James C. McKinney, Chief, Mass Media Bureau. The verification of broadcast function, the Commission noted, is an element of the business of broadcasting and is therefore as much a part of the broadcast production activity as cueing and control signals that are used in program presentation activity. Id. See also Report and Order, BC Docket No. 78-308, 46 Fed. Reg. 40024 (Aug. 6, 1981) (source identification signals).

The Ad Audit System

Ad Audit offers a system of monitoring commercials and programs which will provide broadcasters, advertisers, advertising agencies, syndicators, charitable organizations, and candidates for public office with the information they need to verify exactly when, where and how their commercials, public service announcements and programs were broadcast. Specifically, Ad Audit Reports will tell clients:

- whether the right spot or program aired at the right time
- whether the spot or program was cut short
- the exact length of the video
- the presence -- or absence -- of color
- whether competing products (which use Ad Audit) are advertised in the same break.

Attachment A contains a diagram captioned "Ad Audit: How it works."

The components of the Ad Audit system include:

The Code Inserter. The Code Inserter is used in video post-production facilities to insert into com-

Mr. William J. Tricarico
June 12, 1985
Page 3

code includes the advertiser's name, the spot code and the spot name.

The Data Receiver. Ad Audit's Receiver collects data from every commercial television station and major cable and satellite distribution systems.

The Data Transmission System. Each Data Receiver will communicate daily with a central computer in Alexandria, Virginia, and transfer its data on commercials. A secure automated transmission system sends all information from each market to the central computer for storage.

The Ad Audit Report. The information gathered by Ad Audit is processed in New York for the convenience of the broadcast and advertising industries. Ad Audit Reports will be available weekly, monthly or quarterly.

Request for Authority

As noted above, the Commission has held that data contained in an encoded signal used for verification of programs and commercials, while not intended for reception by the public, is clearly related to the program materials within which it is transmitted and to the operation of normal broadcast service.

Pursuant to the FCC's recent authorization of the expanded use of the vertical blanking interval (VBI) (Report and Order, MM Docket No. 84-168, FCC 84-530, released Jan. 30, 1985), no prior authority is needed to transmit an encoded signal via the VBI. However, the licensees of television broadcast stations use the VBI for a variety of different purposes (e.g., test signals, origination codes, closed captioning information, etc.) -- they can and do delete signals transmitted via the VBI for a variety of reasons, ranging from matters of policy^{1/} to inadvertence. Since the Ad Audit verification system needs to be fully reliable, Ad Audit seeks authority, pursuant to the Commission's Public Notice dated April 20, 1970, to encode identification information on line 22 of

1/

See attachments to letter dated May 7, 1985, to FCC from Burton Greenberg, President, TeleScan, Inc., New York, New York (File No. MMP-1).

Mr. William J. Tricarico
June 12, 1985,
Page 4

the television active video signal. As shown in the attached Engineering Statement of Howard T. Head, A.D. Ring & Associates, Ad Audit's data signal will cause no significant degradation to any portion of the visual or aural signal, nor produce emissions outside the authorized television channel.

In its Public Notice under date of April 20, 1970, the Commission stated that permission to use a special signal, such as that proposed by Ad Audit, "...will be granted only where it is infeasible to transmit the signals by means which have no detrimental effect on the broadcast service." Here, the very nature and purpose of the information to be encoded requires that it be transmitted as an integral part of its associated program material. Authority to use line 22 is needed by Ad Audit to assure a wholly reliable system of verification, a goal recently endorsed by the Commission in its Second Notice of Proposed Rule Making, MM Docket No. 83-842 (FCC 85-26, released Feb. 5, 1985) (private verification system encouraged to monitor network clipping and fraudulent billing).

Request for Consolidation
and Expedited Action

In a Public Notice released on June 10, 1985, the Mass Media Bureau asked for comments on a request filed by TeleScan, Inc., for FCC approval of a system for independent verification of broadcasts of television commercials. Similar to Ad Audit, TeleScan seeks approval to transmit the data signals for its system on line 22 of the television active video signal. Ad Audit urges the Commission to consolidate the Ad Audit and TeleScan requests and to issue a Public Notice at the earliest possible time announcing that parties wishing to file formal comments on the issues raised by Ad Audit's request may do so by filing comments on or before July 5, 1985, and reply comments on or before July 15, 1985. In view of the expressed interest of the Association of Maximum Service Telecasters (MST) and the

Mr. William J. Tricarico
June 12, 1985
Page 5

National Association of Broadcasters (NAB) in the Ad Audit system, 2/ a copy of this letter is being delivered by hand today to counsel for these two trade associations. Ad Audit submits that a consolidated pleading cycle and expedited action on its request for authority would serve the public interest by complying with the mandate given to the FCC by Congress "to encourage the provision of new technologies and services to the public." 47 U.S.C. § 7(a). Counsel for MST has advised the undersigned that MST and NAB would interpose no objection to Ad Audit's request for a consolidated pleading cycle, using the dates for comments and reply comments specified in the FCC's Public Notice of June 10, 1985.

Respectfully submitted,

AD AUDIT INC.

By:


Erwin G. Krasnow

Verner, Liipfert, Bernhard, McPherson
and Hand, Chartered
1660 L Street, N. W.
Suite 1000
Washington, D.C. 20036

Its Attorney

Copies to (w/enclosures):

James McKinney, FCC
Charles Schott, FCC
Alan Stillwell, FCC
John Reiser, FCC
Paul G. Gaston, Counsel for MST
Henry L. Baumann, General Counsel, NAB
Burton Greenberg, President, TeleScan, Inc.

- 2/ Ad Audit interposes no objection to the request filed by MST and NAB on June 5, 1985, that interested parties be allowed an opportunity to submit comments on the Ad Audit and TeleScan proposals. Moreover, Ad Audit agrees with MST and NAB that the television licensee has ultimate authority for determining whether a particular use of the VBI or the active television signal would degrade or interfere with its regular service, or would be inconsis-

AFFIDAVIT

I, David H. Harkness, under penalty of perjury, do hereby declare and state as follows:

1. I am Vice President, Director of Marketing, for A.C. Nielsen Company ("Nielsen").

2. I have reviewed the Application for Review filed by Airtrax on December 20, 1989, and the exhibits attached thereto, as well as Airtrax's Motion for Stay which was filed on the same date.

3. Soon after the issuance to Nielsen of the Permissive Authority, Nielsen undertook with Paramount Pictures Corporation to test the transmission of Nielsen's SID Codes on line 22 of certain Paramount programming. Those tests have been successful and the tests have been implemented in a way to avoid overwriting any other party's codes that might appear in commercial advertisements that are contained in the programming.

4. It is my belief that issuance of a stay or withdrawal of Nielsen's authority to use line 22 would cause substantial harm to both Nielsen and to those syndicators which use Nielsen's rating services. Without the use of line 22, Nielsen would be prevented from improving its rating services and syndicators would be prevented from receiving better ratings.

4. The foregoing is accurate to the best of my knowledge and belief.


David H. Harkness

Jan 16, 1990
Date

Sworn to and subscribed before
me this ____ day of January, 1990

My commission expires:

AFFIDAVIT

I, Steven A. Goldman, under penalty of perjury, do hereby declare and state as follows:

1. I am Executive Vice President of the Domestic Television Division of Paramount Pictures Corporation.

2. I understand that on December 20, 1989, Airtrax filed with the FCC a Motion for Stay and Application for Review of the grant of Permissive Authority issued to A.C. Nielsen Company ("Nielsen") on November 22, 1989.

3. Soon after the issuance to Nielsen of the Permissive Authority, Paramount undertook with Nielsen to test the transmission of Nielsen's SID Codes on Line 22 of certain Paramount programming. We have implemented the tests so as to avoid overwriting any other party's codes that might appear in commercial advertisements that are contained in our programming.

4. It is Paramount's belief that issuance of a stay or withdrawal of Nielsen's authority to use Line 22 would cause substantial harm to Paramount Pictures Corporation, as well as to other syndicators and the viewing public. Virtually all national advertising for first-run syndication is sold based on Nielsen's ratings. Barter sales alone in the current broadcast season have reached one billion dollars. It is essential that advertisers purchasing time in Paramount programs have program lineup verification that is equivalent to the verification that is supplied to Networks. Improvement of the accuracy and timeliness of Nielsen's Annotated Measurement of Line-up ("AMOL"), which would be provided by the use of Line 22, secures that equivalent verification to the syndicated television industry. Excluding Nielsen from the use of Line 22 would be economically unfair to the syndicated programming industry and would irreparably and unduly harm the companies which rely upon Nielsen's services.

5. The foregoing is accurate to the best of my knowledge, information and belief.

Sworn to by me under penalty of perjury this 16th day of January, 1990 at New Orleans, Louisiana



Steven A. Goldman

1/16/90

Date

AFFIDAVIT

I, Ronald G. Schlameuss, under penalty of perjury, do hereby declare and state as follows:

1. I am President of Valley Stream Group, Ltd. which manufactures the encoders, in particular the SGR-38 SID Encoder, that I understand to be used by syndicators and production houses in connection with Nielsen's AMOL service.

2. I have reviewed the Application for Review filed by AirTrax on December 20, 1989, and the exhibits attached thereto, as well as AirTrax's Motion for Stay which was filed on the same date.

3. Contrary to what was stated in AirTrax's Application for Review and Motion for Stay, my October 2, 1989 letter to David H. Harkness of Nielsen, in which I stated that "alterations required [to the SGR-38 SID Encoder] to allow the cessation and re-institution of encoding would be minimal," was not based upon a misconception that Nielsen was proposing to use only Line 20. Rather, in my discussions with Nielsen, and when drafting my subsequent letter to Mr. Harkness, I had full knowledge that Nielsen was inquiring into the possibility of modifying its SID Encoder for use on Line 22 and to provide for an automatic pause feature when another code is sensed.

4. In my November 17, 1989 letter to Mr. Patterson of Absolute Post, Inc., I indicated that there was a "possibility" that the SGR-38 Encoder could be modified to enable the detection of a signal other than Nielsen's code on Line 22 and allow that signal to pass unencumbered. I used the term "possibility" only because such a system has not been fully implemented and tested and, out of a sense of conservatism, was hesitant to be more definite without such testing. However, based upon my 7 years of experience with the design and manufacture of the encoders used by syndicators in connection with Nielsen's AMOL service, I see no reason why the encoders could not be modified to provide for such a "pause" feature. Furthermore, I see no reason why such a system would not work effectively once designed and tested.

5. The foregoing is accurate to the best of my knowledge, information and belief.

Jan 15, 1990
Date

Ronald G. Schlameuss, pres.
Ronald G. Schlameuss

Sworn to and subscribed before
me this 15 day of January, 1990

[Signature]
Notary Public

DOMINICK J. DOMINGUEZ
NOTARY PUBLIC, State of New York
No. 4073008
Qualified in Nassau County
Term Expires May 4, 1991

My commission expires: 5/4/91

AFFIDAVIT

I, Bruce K. Rosenblum, under penalty of perjury, do hereby declare and state as follows:

1. I am Senior Vice President, Research, of Warner Bros. Domestic Television Distribution.

2. I understand that on December 20, 1989, Airtrax filed with the FCC a Motion for Stay and Application for Review of the grant of Permissive Authority Issued to A.C. Nielsen Company ("Nielsen") on November 22, 1989.

3. The authorization of Nielsen to utilize Line 22 is a matter of great interest to Warner Bros. Without such authorization, Nielsen advises us that they will be greatly restricted in providing our industry with accurate and timely program clearance information which is essential to us. It is in the interest of Warner Bros. Television Distribution to allow Nielsen to utilize Line 22 if in doing so the most accurate rating data can be ascertained. Further delay and/or restriction of Nielsen's use of Line 22 in determining such critical information could potentially result in the loss of significant advertising revenue to Warner Bros. and other syndicators.

4. The foregoing is accurate to the best of my knowledge, information and beliefs.


Bruce K. Rosenblum

1/16/90
(Date)

Sworn to and subscribed before me this _____ day of January, 1990.

Notary Public

CERTIFICATE OF SERVICE

I, Arlene F. Lacki, a secretary in the law firm of Gardner, Carton & Douglas, do hereby certify that a true and correct copy of the foregoing "Opposition to Application for Review" was sent on this 19th day of January, 1990, by first-class mail, postage prepaid, to the following:

The Honorable Alfred C. Sikes*
Chairman
Federal Communications Commission
1919 M Street, N.W. Room 814
Washington, D.C. 20554

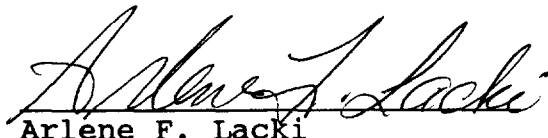
The Honorable James H. Quello*
Member
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

The Honorable Sherrie P. Marshall*
Member
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

The Honorable Andrew C. Barrett*
Member
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Roy J. Stewart, Esquire*
Chief
Mass Media Bureau
Federal Communications Commission
1919 M Street., N.W. Room 314
Washington, D.C. 20554

John G. Johnson, Jr., Esquire
Bryan, Cave, McPheeters & McRoberts
10-15 - 15 Street, N.W., Suite 1000
Washington, D.C. 20005-2689


Arlene F. Lacki

* Delivered by hand.